Abstract: This work’s purpose is to make an entry in environmental law, different aspects regarding civil, contraventional and criminal liability.

The constant degradation of the environment is, nowadays, one of mankind’s greatest problems. The environment is affected both by the consequences of underdevelopment, as well as those of excessive development.

In our country, the protection of the environment is a matter of national interest, representing an obligation of the authorities, central and local public administrations, as well as of the people and companies. The need to exploit, but also to protect the components of the natural environment (the geographical environment, physiological, biological and demographical factors) have determined the passing of a new set of laws, specific to each state.

In community law, laws regarding the protection of the environment, the control of dangerous waste passing borders, the rational use of human resources, the protection of rare species of flora and fauna, have been passed.

Regarding the notion of “environment”, in the European Community’s view, it is defined as the ensemble of elements, which, in the complexity of their relations, constitute the frame, means and condition of man’s life.

In specific literature, the environment is seen as an ensemble of factors (natural of created by human activity), which act upon man’s existence.

In internal law, the legal definition of the environment was given by article 1, point 41 of the Government’s Law no. 195/2005, regarding the protection of the environment.

Although it is common in every branch of the law, the notion of judicial liability suggests sanction. Being a historical category, the historical liability is a living institution, which formed and evolved with human society.

In environmental law, the judicial liability has become influenced by the technical-scientific revolution, a so-called “hot zone” thanks to the worldwide ecological situation, which was severely affected by the consequences of industrialization and automatisation, of unreasonable exploitation of human resources, as well as other factors.

In our country, judicial liability is found in Government’s Law no. 195/2005 regarding the protection of the environment. Some authors consider that the notion of surrounding environment is a pleonastic wording.

It is well acknowledged that, in the field of environment protection and the preservation of nature, the most important role is played by the prevention means, both civil and administrative, while the criminal law means play a secondary role.

Civil liability in environmental law: whenever a damage is caused by different behaviors, the damage must be retrieved through civil liability. Generally speaking, civil liability sanctions a blamable, antisocial behavior of both people and companies, who, through their illegal actions, cause damage to the environment. In the field of environmental protection, we find two classical civil law
institutions: those regarding the proximity report, whose essence refers to the conciliation of the polluting agent’s interests with those of the victim of the pollution, thus being settled the admissibility limit of pollution and the correlative obligation that the damages be recovered by the one who pollutes and those which establish recuperatory civil liability.

It has been said that civil law can’t serve the interest to recuperate the damage caused to the environment, because it protects private interests, while the ecological damage affects public interest.

In the same area, it is said that the current use of civil law means to protect the environment is more of an alternative, than a solution. To ensure civil liability in environmental law, a few conditions need to be fulfilled: the existence of an illegal act, an ecological damage, the guilt of the author and the delictual capacity of the author at the moment the illegal act occurred. Also, in the area of civil law, the damage must be certain. As showed in judicial literature, in a situation like this, if the full extent of the prejudice is unknown (this occurs mostly in the case of environmental factor pollution) the court will only limit its action to the obligation to repair the damage which is certain, but is given the possibility to further oblige the perpetrator to repair any damage which occurs after the initial decision, the only condition to be fulfilled is that the existence of the further damage is caused by the same action.

In environmental law, the notion of “damage” is often replaced with “ecological prejudice”, which includes both damages suffered by the surrounding environment by pollution, as well as those suffered by man or his property. As it has been noticed and found to be normal, there are a series of specifics of civil liability for environmental facts, as opposed to the general liability in civil law. Thus, it is very important to define the notion of “ecological prejudice”.

This definition has caused a series of difficulties in specific literature, difficulties that did not result in a generally accepted definition; this lack of success is apparently owed to the fact that it started from the wrong premises, that the ecological damage is a civil prejudice, when, in fact, there are fundamental differences between these two institutions.

The legal definition of the notion of “prejudice” is stated by article 2 of the Government’s Law no. 195/2005: a quantifiable adverse change of a natural resource or a quantifiable degradation of the functions fulfilled by a natural resource in the benefit of another natural resource or the public, which can occur directly or indirectly.

In a doctrinaire phrasing, it has been considered that the “ecological prejudice” is any damage, with negative effects (patrimonial or non patrimonial), to an environmental factor, regardless of whether this is close or not, caused as a result of environment pollution.

A special thing about civil liability for ecological damages is that it is no longer guided by the statement of article 998 of the Civil Code, based upon which the victim can’t be awarded the recovery of the ecological prejudice only if he or she can prove the guilt of the perpetrator.

As shown in judicial literature, the “ecological prejudice” is that damage caused to the ensemble of elements of a system and which, thanks to its indirect and diffuse character, does not allow a right to recovery of prejudice.

In order to find out whether the victim of such a crime is man or the environment, some authors consider that the “ecological prejudice” is that whose victim is man or his property damaged by the environment in which they are found, thus the environment being considered the cause and not the victim of the damage.

Ecological damage is irreversible, it is a damage caused in its manifestation and in the establishment of the causality connection.

Regarding the determining of the full extent of the damage caused, this is found to be rather difficult to achieve, given the large number of unknown factors, because many of the components of the environment can’t be awarded an economical value.
Some damage to the environment or its components can be traced back to more than one perpetrators. In this case, to consider a damage as caused by multiple perpetrators, it is not necessary for those to act simultaneously, with the same intensity, or that the actions be connected through an unique goal, nor that the person who caused the result, together with other people, be aware of the other’s actions. It is only necessary that the illegal conduct forms and indivisible whole – the cause of the damage.

Finally, the subjective element of civil liability is guilt. The Government’s law no. 195/2005 states, in article 95, two principles that govern civil liability for environmental facts: independent objective responsibility of guilt and the unified responsibility in case of more than one authors.

A special mention is to be made in connection with civil action in the area of environment protection.

Article 95 of the Government’s law no. 195/2005 states a special procedure rule, that of giving the right to legal action in order to preserve the surrounding environment, to non governmental organizations, regardless of the victim of the damage.

This is not the case only in environmental law in Romania. Other judicial law systems acknowledge the right to court action to organizations in order to protect the environment. Although, in civil law, guilt is the main reason of delictual liability, it is not the only one. In the area of nuclear damage, an area in which we have a specific regulation of law, delictual liability is no longer based on guilt, but on risk

Contraventional liability in environmental protection law:
Contraventional liability plays an important role in the system of judicial liability regulation, having both an economical role, as well as being a serious mean of prevention.

People and companies which are engaged in any activities that brake the rules regarding environment protection, or who don’t fulfill the legal obligation which arise from the judicial law environment reports are likely to be held contraventionally liable, to an extent proportional to the degree of pollution caused, in accordance with the consequences and the degree of social danger of the illegal act.

The fact that even the companies can be held contraventionally liable is explained rather easy: they have a series of specific obligations in order to ensure the normal development of social relations regarding the environment.

The contraventional fine is applied by those empowered to do so in the name of the organs of administrative power, without researching the guilt of the polluting agent.

The responsibility for pollution has an objective character, it can occur every time the environment was polluted; the degree of pollution, the negative consequences caused to the surrounding environment and to the economy, the social danger of the illegal conduct, they are all considered only in establishing the contraventional fine.

Government’s Law no 195/2005 states a series of contraventions sanctioned with a fine which will be established by the law (article 96).

The perpetrator can pay, on the spot, or in maximum 48 hours from the date of the offence or from the time he or she became aware of the offence, half of the minimum of the fine stated in law, the agent who applies the fine is obliged to mention this possibility in the act which sanctions the contravention.

It is generally accepted that, by applying the contraventional sanctions in the matter of protecting the environment, the general purpose is to determine the polluting agent to promote technologies and techniques that protect the natural and man-made environment, to create an economical balance factor, thus those who pollute do not obtain bigger profits than those who abide by
the legal requests in this matter, to obtain funds which are to be used to finance anti pollution investments.

Regarding the procedural aspects, article 97, point (1) from the Government’s Law no. 195/2005 states a few special rules. The establishing of the contraventions is realized by empowered to do so employees of the Environment National Guard, The National Commission for Control of Nuclear Activities, police men an employees of the National Defense Minister, empowered to do so in its areas of activity, according to their legal attributions. Further more, the establishing of a contravention can be made by the personnel of the administrative structures and by the guardians of the natural protected areas, but only on the territory of that certain protected area.

Criminal liability in environmental protection law:

It is generally acknowledged that, in the area of environment protection and the preservation of nature, the most important role is played by the civil or administrative prevention means, means which are governed by the principle of minimum intervention, while the criminal means of prevention play a secondary role. The spectacular evolution of environment law, under the pressure of the general ecological crisis and the preoccupation of the industrialized states to protect the environment, have only pointed out the insufficiency and inefficiency of the civil and contraventional law.

Criminal liability in environmental law is one of the very principles of infractional liability, its specifics being determined by the nature of the object protected by law and which is damaged by al illegal, guilty conduct.

Environmental crimes can be defined as those dangerous acts, which damage the environment, damages that finally result in a prejudice to people and companies, the endangerment of the health of people, animals, plants or the causing of damages to the national economy.

Environment protection law sanctions as crimes a series of illegal acts, which endanger life or human, animal or vegetal health; their sanction is fine or serving time in prison. Given all these, in the context of the profound worldwide ecological crisis, it has been stated that there is an insufficiency and an inefficiency of the law in the field of environment protection. In these conditions, criminal liability, as the most severe form of liability, is called to play its part in the abiding by the environment protection law.

But, in order to effectively play an important part in the protection of the environment, criminal law must not only adapt and state proportional sanctions with the degree of the ecological prejudice, but also to institute a repression of the pollution which can’t be mistaken with the repression of contravention, case in which a simple breach of administrative prescriptions is sanctioned.

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